

1 INSTRUCTION NO. _____

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3 DUTY TO DELIBERATE

4 When you begin your deliberations, you should elect one member of the jury as your
5 presiding juror. That person will preside over the deliberations and speak for you here in court.

6 You will then discuss the case with your fellow jurors to reach agreement if you can do
7 so. Your verdict must be unanimous.

8 Each of you must decide the case for yourself, but you should do so only after you have
9 considered all of the evidence, discussed it fully with the other jurors, and listened to the views
10 of your fellow jurors.

11 Do not be afraid to change your opinion if the discussion persuades you that you should.
12 Do not come to a decision simply because other jurors think it is right.

13 It is important that you attempt to reach a unanimous verdict but, of course, only if each
14 of you can do so after having made your own conscientious decision. Do not change an honest
15 belief about the weight and effect of the evidence simply to reach a verdict.
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25 Model Civ. Jury Instr. 9th Cir. § 4.1
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1 INSTRUCTION NO. _____

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4 USE OF NOTES

5 Some of you have taken notes during the trial. Whether or not you took notes, you
6 should rely on your own memory of what was said. Notes are only to assist your memory. You
7 should not be overly influenced by the notes.

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21 Model Civ. Jury Instr. 9th Cir. §4.2
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1 INSTRUCTION NO. _____

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3 COMMUNICATION WITH COURT

4 If it becomes necessary during your deliberations to communicate with me, you may send
5 a note through the bailiff, signed by your presiding juror or by one or more members of the jury.
6 No member of the jury should ever attempt to communicate with me except by a signed writing;
7 and I will communicate with any member of the jury on anything concerning the case only in
8 writing, or here in open court. If you send out a question, I will consult with the parties before
9 answering it, which may take some time. You may continue your deliberations while waiting for
10 the answer to any question. Remember that you are not to tell anyone--including me--how the
11 jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have
12 been discharged. Do not disclose any vote count in any note to the court.
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24 Model Civ. Jury Instr. 9th Cir. § 4.3
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1 INSTRUCTION NO. _____

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3 RETURN OF VERDICT

4 A verdict form has been prepared for you. After you have reached unanimous agreement
5 on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it,
6 and advise the court that you are ready to return to the courtroom.
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19 Model Civ. Jury Instr. 9th Cir. § 4.4
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1 INSTRUCTION NO. _____

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3 BURDEN OF PROOF--PREPONDERANCE OF THE EVIDENCE

4 When a party has the burden of proof on any claim or affirmative defense by a
5 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or
6 affirmative defense is more probably true than not true.

7 You should base your decision on all of the evidence, regardless of which party presented
8 it.

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18 Model Civ. Jury Instr. 9th Cir. § 5.1
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1 INSTRUCTION NO. _____

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3 CORPORATIONS--FAIR TREATMENT

4 All parties are equal before the law and a corporation is entitled to the same fair and
5 conscientious consideration by you as any party.
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18 Model Civ. Jury Instr. 9th Cir. § 6.1
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1 INSTRUCTION NO. _____

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3 LIABILITY OF CORPORATIONS--SCOPE OF AUTHORITY NOT IN ISSUE

4 Under the law, a corporation is considered to be a person. It can only act through its
5 employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of
6 its employees, agents, directors, and officers performed within the scope of authority.
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19 Model Civ. Jury Instr. 9th Cir. § 6.2
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1 INSTRUCTION NO. _____

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3 INDEPENDENT CONTRACTOR--DEFINITION

4 An independent contractor is a person who performs services for another person under an
5 express or implied agreement and who is not subject to the other's control, or right to control, the
6 manner and means of performing the services.

7 One who engages an independent contractor is not liable to others for the acts or
8 omissions of the independent contractor.
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23 Model Civ. Jury Instr. 9th Cir. §6.11
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1 INSTRUCTION NO. _____

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3 DAMAGES--PROOF

4 It is the duty of the Court to instruct you about the measure of damages. By instructing
5 you on damages, the Court does not mean to suggest for which party your verdict should be
6 rendered.

7 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has
8 the burden of proving damages by a preponderance of the evidence. Damages means the amount
9 of money which will reasonably and fairly compensate the plaintiff for any injury you find was
10 caused by the defendant. You should consider the following:

11 Pain and suffering

12 past medical expense

13 future medical expense

14 The plaintiff has the burden of proving damages by a preponderance of the evidence, and
15 it is for your to determine what damages, if any, have been proved.

16 Your award must be based upon evidence and not upon speculation, guesswork or
17 conjecture.

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23 Model Civ. Jury Instr. 9th Cir. §7.1
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1 INSTRUCTION NO. _____

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3 MEASURES OF TYPES OF DAMAGES

4 In determining the measure of damages, you should consider: The pain and suffering,
5 emotional distress, mental anguish, diminished quality of life;

6 The reasonable value of necessary medical care, treatment, and services received to the
7 present time;

8 The reasonable value of necessary medical care, treatment, and services which with
9 reasonable probability will be required in the future;

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24 Model Civ. Jury Instr. 9th Cir. §7.2 - modified
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1 INSTRUCTION NO. _____

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3 DAMAGES--MITIGATION

4 The plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means
5 to avoid or reduce damages.

6 The defendant has the burden of proving by a preponderance of the evidence.

7 1. that the plaintiff failed to use reasonable efforts to mitigate damages; and

8 2. the amount by which damages would have been mitigated.

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18 Model Civ. Jury Instr. 9th Cir. §7.3
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1 INSTRUCTION NO. _____

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3 NOMINAL DAMAGES

4 The law which applies to this case authorizes an award of nominal damages. If you find
5 for the plaintiff but you find that the plaintiff has failed to prove damages as defined in these
6 instructions, you must award nominal damages. Nominal damages may not exceed one dollar.
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18 Model Civ. Jury Instr. 9th Cir. § 7.6
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INSTRUCTION NO. _____

NEGLIGENCE--ESSENTIAL ELEMENTS

The plaintiff seeks to recover damages based upon a claim of negligence.

The essential elements of this claim are:

1. The defendant was negligent;
2. Defendant's negligence was a cause of injury to plaintiff.

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1 INSTRUCTION NO. _____

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3 NEGLIGENCE AND ORDINARY CARE--DEFINITIONS

4 Negligence is the doing of something which a reasonably prudent person would not do,
5 or the failure to do something which a reasonably prudent person would do, under circumstances
6 similar to those shown by the evidence.

7 It is the failure to ordinary or reasonable care.

8 Ordinary or reasonable care is that care which persons of ordinary prudence would use in
9 order to avoid injury to themselves or others under circumstances similar to those shown by the
10 evidence.

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1 INSTRUCTION NO. _____

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3 A TEST FOR DETERMINING THE QUESTION OF NEGLIGENCE

4 One test that is helpful in determining whether a person was negligent is to ask and
5 answer the question whether or not, if a person of ordinary prudence had been in the same
6 situation and possessed of the same knowledge, he or she would have foreseen or anticipated that
7 someone might have been injured by or as a result of his or her action or inaction. If the answer
8 to that question is "yes", and if the action or inaction reasonably could have been avoided, then
9 not to avoid it would be negligence.
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1 INSTRUCTION NO. _____

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3 AMOUNT OF CAUTION VARIES

4 The amount of caution required of a person in the exercise of ordinary care depends upon
5 the conditions that are apparent or that should be apparent to a reasonably prudent person under
6 circumstances similar to those shown by the evidence.
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1 INSTRUCTION NO. _____

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3 RIGHT TO ASSUME OTHERS' GOOD CONDUCT

4 Every person who is exercising ordinary care, has a right to assume that every other
5 person will perform his duty. In the absence of reasonable cause for thinking otherwise, it is not
6 negligence for a person to fail to anticipate an accident which can occur only as a result of a
7 violation of duty by another person.
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1 INSTRUCTION NO. _____

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3 RIGHT TO ASSUME OTHERS' NORMAL FACULTIES

4 A person who is exercising ordinary care has a right to assume that other persons are
5 ordinarily intelligent and possessed of normal sight and hearing, unless there is reasonable cause
6 of thinking otherwise.
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1 INSTRUCTION NO. _____

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CAUSE--SUBSTANTIAL FACTOR TEST

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The law defines cause in its own particular way. A cause of injury is something that is
5 substantial factor in bringing about an injury.

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1 INSTRUCTION NO. _____

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3 CONTRIBUTORY NEGLIGENCE--DEFINITION

4 Contributory negligence is negligence on the party of a plaintiff which, combining with
5 the negligence of a defendant, contributes as a cause in bringing about the injury.

6 Contributory negligence, if any, on the party of the plaintiff does not bar a recovery by
7 the plaintiff against the defendant but the total amount of damages to which the plaintiff would
8 otherwise be entitled must be reduced in proportion to the amount of negligence attributable to
9 the plaintiff.
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1 INSTRUCTION NO. _____

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3 SPECULATIVE DAMAGES NOT PERMITTED

4 Do not award a party speculative damages, which means compensation for future loss or
5 harm which, although possible, is conjectural or not reasonably certain.

6 However, if you determine that plaintiff is entitled to recover, you should compensate
7 plaintiff for loss or harm caused by the injury in question which is reasonably certain to be
8 suffered in the future.
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1 INSTRUCTION NO. _____
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4 PERSONAL INJURY--NO PUNITIVE DAMAGES

5 Do not include as damages any amount that you might add for the purpose of punishing
6 or making an example of the defendant for the public good or to prevent other accidents. Those
7 damages would be punitive and they are not authorized in this action.
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1 INSTRUCTION NO. _____
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4 DAMAGES--EMOTIONAL DISTRESS

5 If you find that plaintiff is entitled to a verdict against defendant, you should then award
6 plaintiff damages in an amount that will reasonably compensate plaintiff for all loss or harm,
7 provided that you find it was or will be suffered by plaintiff and was caused by the defendant's
8 conduct. The amount of your award should include:

9 Reasonable compensation for any fears, anxiety and other emotional distress suffered by
10 the Plaintiff. This is a non-economic damage.

11 No definite standard or method of calculation is prescribed by law by which to fix
12 reasonable compensation for emotional distress. Nor is the opinion of any witness required as to
13 the amount of such reasonable compensation. Further, the argument of counsel as to the amount
14 of damages is not evidence of reasonable compensation. In making an award for emotional
15 distress, you shall exercise your authority with calm and reasonable judgment, and the damages
16 you fix shall be just and reasonable in the light of the evidence.

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1 INSTRUCTION NO. _____

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3 PLEADINGS OR ARGUMENT--NOT EVIDENCE OF DAMAGES

4 The amount of damages claimed either by the written pleadings, or in the argument of
5 counsel must not be considered by your as evidence of reasonable compensation.
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1 INSTRUCTION NO. _____

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3 DAMAGES--PERSONAL INJURY--DUTY TO MITIGATE

4 It is the duty of a person who has been injured to use reasonable diligence in caring for
5 his injuries and reasonable means to prevent their aggravation and to accomplish healing.

6 When one does not use reasonable diligence to care for his injuries, and they are
7 aggravated as a result of this failure, the liability, if any, of another whose act or omission was a
8 cause of the original injury, must be limited to the amount of damage that would have been
9 suffered if the injured person himself had exercised the diligence required of him.
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1 INSTRUCTION NO. _____

2 GUIDELINES IN DETERMINING COMPARATIVE NEGLIGENCE

3 In the event that you find there was negligence on the part of the plaintiff which
4 contributed as a cause of plaintiff's injuries, then in order to determine the proportionate share of
5 the total fault attributable to the plaintiff, you must evaluate the combined negligence of the
6 plaintiff and the negligence of the defendant whose negligence contributed as a cause to
7 plaintiff's injury.

8 In comparing the fault of these persons you should consider all the surrounding
9 circumstances as shown by the evidence.

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